

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

LISA MILTENBERGER,)	
)	
Petitioner,)	
)	
v.)	Vet. App. No. 16-3531
)	
ROBERT A. McDONALD,)	
Secretary of Veterans Affairs,)	
)	
Respondent.)	

**THE SECRETARY'S ANSWER TO PETITION
FOR EXTRAORDINARY RELIEF
AND RESPONSE TO THE COURT'S ORDER**

Pursuant to U.S. Vet. App. R. 21(d) and this Court's October 28, 2016, Order, Respondent, Robert A. McDonald, Secretary of Veterans Affairs, submits this response to the Court's Order and this answer to Petitioner's application for extraordinary relief in the nature of a writ of mandamus, which seeks assistance from the Court regarding her pending claim of entitlement to service connection for the Veteran's diabetes mellitus, Type II and multiple myeloma, based on exposure to Agent Orange in Vietnam. Petition at Exhibits 1-3.

The undersigned counsel established liaison with senior officials at VA Regional Office (RO), Fargo, ND, who reviewed the relevant documents in the Veterans Benefits Management System (VBMS) claims file for the Veteran and his widow.

The Director for the Fargo RO Los Angeles provided a declaration (Exhibits 4-6), that addressed the following documents and events contained in the Veteran's records:

- 2/10/15—BVA remand for deck logs of *USS Passumpsic*. Service records show Veteran served aboard the *USS Passumpsic* from 3/70 to 1/73.
- 3/5/15—JSRRC request for deck logs.
- 3/17/15—DPRIS/JSRRC response—information in request does not meet the criteria for submitting an adequate request.
- 5/23/15—Letter to NARA requesting verification occurrence of Agent Orange exposure.
- 6/25/15—Letter from NARA notifying of enclosed deck log dated 6/28/71 and research done through 8/71.
- 6/29/15—Deck logs from NARA received but only the period from 6/71 to 8/71. The CAVC remand calls for deck logs for all periods the *USS Passumpsic* sailed in the waters of Vietnam.
- 8/18/15—Letter from Attorney Kinman requesting status of appeal remand.
- 10/15/15 - Letter to NARA requesting deck logs from 2/70 through 2/73.
- 11/11/15—Duplicate letter dated 6/25/15 received from NARA.
- 1/8/16—Letter to NARA requesting all deck logs as specified in our letter 10/15/15.
- 1/8/16—Letter to substitute claimant informing that we have requested evidence.

- 3/31/16—Letter from Attorney Kinman requesting status of appeal remand.
- 5/9/16 - Letter to NARA second request for deck logs.
- 5/9/16—Letter to Attorney Kinman informing we are waiting on records from NARA.
- 6/11/16—Letter from NARA dated 3/31/16 with enclosed relevant deck logs.
- 7/23/16—Letter from Attorney Kinman with concerns of delay to decide appeal.
- 8/1/16—Email to NARA informing deck logs were not received with letter. Request to resend the deck logs.
- 8/30/16—Letter from Attorney Kinman notifying without determination a Petition for Extraordinary Relief with be filed with Court.
- 10/24/16--Second email request to NARA to resend deck logs.
- 11/08/16--Response to VA General Counsel Request to NARA. (Deck Logs Summary—Exhibit 7).
- 11/08/16--Case assigned to Decision Review Officer (DRO).
- 11/16/16--Rating Decision Completed, full grant on appeal.

As the Director for the Fargo RO noted, several early and continuing requests were made to JSRRC/NARA in an effort to secure the information as to any Deck Logs for the *USS Passumpsic* during the period of 1970-1973. Unfortunately, there were delays in actually securing the requisite

information. The Secretary apologizes for the delay experienced by the Veteran's widow.

The Director for the Fargo RO explained that the DRO has reviewed the evidence of record and determined that the benefits will be granted. A DRO Decision, dated November 16, 2016, granted service connection for Diabetes Mellitus, Type II, and assigned a 20% disability rating, effective April 30, 2008, and for multiple myeloma, and assigned a 100% disability rating, effective April 30, 2008. Past-due benefits in the amount of \$202,398 will be issued to Petitioner within 10 business days; an additional amount of \$40,489 has been withheld by the Fargo RO for potential attorney fees. (Exhibits 8-19). Petitioner and counsel will soon be formally notified of the decision and of her appellate rights. Thus, these matters remained active in the adjudication and appeal process before the agency of original jurisdiction (AOJ).

ARGUMENT

The *All Writs Act* (AWA) grants to the Supreme Court and all courts established by Congress, the authority to issue all writs necessary or appropriate in the aid of their respective jurisdictions, and agreeable to the usages and principles of law. 28 U.S.C. § 1651. In *Cox v. West*, 149 F.3d 1360, 1363 (1998), the *Federal Circuit* held that “the Court of Veterans Appeals has the power to issue writs of mandamus in aid of its jurisdiction under the AWA.”

“The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.” *Kerr v. U.S. Dist. Court for N. Dist. Of Cal.*, 426 U.S. 394, 402 (1976).

Three conditions must be met before a court may issue a writ of mandamus: (1) The petitioner must lack adequate alternative means to attain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process, (2) the petitioner must demonstrate a clear and indisputable right to the writ, and (3) the Court must be convinced, given the circumstances, that the issuance of the writ is warranted. See *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380-81 (2004).

A petitioner seeking an extraordinary writ must demonstrate both a “clear and indisputable” entitlement to the writ and the lack of an adequate alternative means to obtain the requested relief. See *Erspamer v. Derwinski*, 1 Vet.App. 3, 9 (1990), quoting *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 384 (1963); see also *Steffens v. Brown*, 8 Vet.App. 142 (1995). Because Petitioner has failed to meet either step of this demanding test, his petition should be denied.

Petitioner raised reasonable concerns regarding the actions by the AOJ, following favorable decisions by the Court and the Board regarding her claim of entitlement to service connection for the Veteran’s diabetes mellitus, Type II and multiple myeloma, based on exposure to Agent Orange in Vietnam. Those benefits have recently been granted in full.

Thus, as noted above, the AOJ's recent actions do not amount to an arbitrary refusal to act, and as such, the Court should deny the Petition. *Costanza v. West*, 12 Vet. App. 133, 134 (1999) (per curium) (declining to grant petition for writ of mandamus where petitioner "has not demonstrated that the delay he complains of is so extraordinary, given the demands and resources of the Secretary, that the delay amounts to an arbitrary refusal to act, and not the product of a burdened system".)

Moreover, in this case, Petitioner has not shown that the potential jurisdiction of the Court will be frustrated because appropriate steps have been undertaken by VA to develop and adjudicate her claims. If not satisfied, Petitioner may perfect an appeal to the Board, and, thereafter, to the Court, if she so chooses. See *United States v. Black*, 128 U.S. 40, 48 (1888) (The Court should refuse to invoke extraordinary powers where it is not shown that an official has refused to act at all). Thus, Petitioner has failed to demonstrate a clear and indisputable entitlement to extraordinary relief at this time, and has not shown that she lacks an adequate alternative remedy.

To the extent that Petitioner may have implied that action on the claim has been intentionally delayed, the Secretary respectfully submits that the information and the items noted above reflect otherwise. When delay is alleged as the basis for a petition, this Court has held that a clear and indisputable right to the writ does not exist unless the Petitioner

demonstrates that the alleged delay is so extraordinary, given the demands upon, and resources of the Secretary, that it is the equivalent to an arbitrary refusal by the Secretary to act. See *Costanza*, 12 Vet.App. at 134. Petitioner has not met her burden on these matters.

Petitioner's writ petition should not be construed in such a way as to bypass VA or Board procedures, in favor of a direct appeal to this Court. The *All Writs Act* is not a substitute for an administrative appeal. See *Bankers Life & Casualty Co. v. Holland*, *supra*; see also *Lamb v. Principi*, 284 F.3d 1378, 1384 (Fed. Cir. 2002) (petition is not a substitute for appeal).

In light of the initial and recent efforts of the AOJ to address Petitioner's claim for benefits, the Secretary respectfully asserts that there is no need or basis for action by the Court at this time.

WHEREFORE, the Secretary hereby submits this information for the Court's consideration and any action deemed appropriate.

Respectfully submitted,

LEIGH A. BRADLEY
General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Edward V. Cassidy, Jr.

EDWARD V. CASSIDY, JR.

Deputy Chief Counsel

Office of General Counsel (027B)

U.S. Department of Veterans Affairs

810 Vermont Avenue, N.W.

Washington, D.C. 20420

(202) 632-6913

Counsel for Respondent

**UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

Lisa Miltenberger : **Docket No.:**

Petitioner, :

vs.

Robert A. McDonald :

Secretary of Veterans Affairs

Respondent. :

PETITION FOR EXTRAORDINARY RELIEF

Pursuant to Rule 21, Petitioner, through counsel, hereby submits the following petition for extraordinary relief. The Petitioner hereby requests that his Honorable Court issue an order to the Department of Veterans Affairs (the “VA”) causing them to adjudicate the pending claim.

In support, Petitioner avers as follows:

1. Petitioner is the wife of deceased Veteran, Clyde W. Miltenberger.
2. During his lifetime, the Veteran sought service connection for diabetes mellitus, Type II, and multiple myeloma.
3. Veteran Miltenberger had a case at this court, docket # 12-1096. That matter was remanded pursuant to a Joint Motion for Remand on February 26, 2014. Specifically, the VA was to acquire deck logs from the Veteran’s ships and provide adequate reasons or bases for why the

Veteran's presence on a pier in Vietnam did not qualify for presumptive service connection.

4. The Veteran passed away on May 12, 2014.
5. The Petitioner, as surviving spouse, was properly substituted in this claim.
6. On February 10, 2015, the Board remanded the claim to acquire the deck logs.
7. Since that time, no action has been taken on this claim.
8. The Petitioner, through counsel, sought updates on: August 14, 2014; March 25, 2016; July 19 2016; and August 26, 2016.
9. The Secretary of Veterans Affairs was contacted directly via mail on August 26, 2016.
10. The Petitioner is in dire economic shape since the passing of her husband.
11. The claim for service connection should be granted based upon the Veteran's service on a pier in Vietnam.
12. The Board/VA arbitrarily refuses to adjudicate the claim.

Respectfully submitted,

Date: October 19, 2016

/s/ Maxwell D. Kinman

Maxwell D. Kinman
423 Reading Rd.
Mason, OH 45040
(513) 228-1100 (Office)
(513) 693-0155 (Cellular)
Max@AWKLegal.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, October 19, 2016, the foregoing document was mailed to the party below:

Secretary of Veterans Affairs
Robert A. McDonald
810 Vermont Ave. NW
Washington, DC 20420

/s/Maxwell D. Kinman
Attorney for Appellant



DEPARTMENT OF VETERANS AFFAIRS
Fargo Regional Office
2101 Elm Street
Fargo, ND 58102

DECLARATION OF PAULA HEITMANN

I, Paula Heitmann, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury the following:

- I. I am the Veterans Service Center Manager for the Fargo VA Regional Office. This declaration is in response to the U.S. Court of Appeals for Veterans Claims, in the matter of Clyde W. Miltenberger, Vet.App. No. 16-3531, in support of the Secretary's response to the Petitioner's application for extraordinary relief in the form of a writ of petition. The facts attested to herein are based on my personal knowledge.
- II. The Petitioner has requested the Court to direct the Secretary to address the writ petition:
 1. Clarify whether Mr. Miltenberger's claim for benefits for diabetes mellitus and multiple myeloma due to herbicide exposure for duty or visitation in the Republic of Vietnam can be granted pursuant to 38 CFR 3.307(a)(6) and 3.309(e).

The claim can be granted based on the evidence received on November 8, 2016. Chronologies of the attempts to place the veteran in Vietnam are below.

2. Explain Mr. Miltenberger's claim stream(s) with respect to claim for service in Vietnam.

2/10/15 - BVA remand for deck logs of USS Passumpsic. Service records show Veteran served aboard the USS Passumpsic from 3/70 to 1/73.

3/5/15 - JSRRC request for deck logs.

3/17/15 - DPRIS/JSRRC response – information in request does not meet the criteria for submitting an adequate request.

5/23/15 - Letter to NARA requesting verification occurrence of Agent Orange exposure.

Miltenberger, Clyde W.

6/25/15 - Letter from NARA notifying of enclosed deck log dated 6/28/71 and research done through 8/71.

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10/24/16 - Second email request to NARA to resend deck logs.

11/08/16 - Response to VA General Counsel Request to NARA

2.


Miltenerberger, Clyde W.

11/08/16 – Case assigned to Decision Review Officer

11/16/16 – Rating Decision Completed, full grant on appeal.

3. Explain whether a determination of service in Vietnam has been made.

Yes. The Fargo Regional Office has made a determination in this case granting entitlement to service connection for diabetes and multiple myeloma.

I certify, under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

Executed on November 16, 2016.

Heitmann, Paula

Digitally signed by Heitmann, Paula
DN: cc=gov, dc=va, ou=Entities,
ou=InternalStaff, cn=Heitmann, Paula
Date: 2016.11.16 13:36:04 -06'00'

Paula Heitmann, VSCM

VA General Counsel request for the USS PASSUMPSIC (AO-107)—Jim Sampsel

We have reviewed the 1970 command history and February 12-March 30; April 1-July 31, 1970 deck logs for the USS PASSUMPSIC (AO-107). The history reveals that the USS PASSUMPSIC departed for a WESTPAC deployment on January 19, 1970. The history further reveals that the USS PASSUMPSIC proceeded to Vietnam via Subic Bay, RP during the period January 19-February 9, 1970. The ship conducted UNREP operations servicing units of the Seventh Fleet in South China Sea operations areas along the coast of Vietnam during the line swing periods February 11-24, March 1-24, April 4-23, May 7-12, 19-23, June 9-15, and July 10-19, 1970; with intervening dates refueling and crew liberty at Subic Bay, Singapore, and Hong Kong. The deck logs further reveal that the USS PASSUMPSIC anchored at Vung Tau on February 15, March 4 and May 21, 1970. On March 6, April 7, 10, 1970 the ship anchored in Da Nang Harbor. On May 19, 1970 the ship anchored in An Thoi, RVN. The USS PASSUMPSIC proceeded to homeport via Subic Bay, Sasebo and Kobe, Japan during the period July 21-August 20, 1970 returning to Long Beach, CA on August 21, 1970.

Also, we reviewed the 1971 command history and April 1-August 31, 1971 deck logs for the USS PASSUMPSIC (AO-107). The history and deck logs documents that the USS PASSUMPSIC departed for a Western Pacific deployment on March 9, 1971. The history further documents that the USS PASSUMPSIC proceeded to Vietnam via Pearl Harbor, Hawaii, and Subic Bay, Republic of the Philippines during the period March 9 to April 10, 1971. The USS PASSUMPSIC conducted underway replenishment (UNREP) operations on Yankee Station, in the Gulf of Tonkin, during the periods April 12-14, 23-26, May 3-7, 21-26, May 31 to June 9, June 16-18, June 26 to July 7, July 19-20, and 27-28, August 2-7, 1971. **On June 28, 1971, the USS PASSUMPSIC was in-port at An Thoi, RVN.** The ship conducted surveillance operations in the North Pacific during the periods August 20-25 and September 6-11, 1971. During the intervening time periods the ship was in port for upkeep and crew liberty at Subic Bay, Kaohsiung, Taiwan, and Hong Kong. The USS PASSUMPSIC proceeded to Sasebo, Japan and conducted operations in the Sea of Japan during the period August 9 to September 13, 1971. The USS PASSUMPSIC returned to Long Beach, California on September 14, 1971.

In addition, we reviewed the 1972 command history, the May 1-December 31, 1972 and January 1-February 28, 1973 deck logs for the USS PASSUMPSIC (AO-107). These documents reveal that the USS PASSUMPSIC departed Long Beach, California for a Western Pacific (WESTPAC) deployment on April 17, 1972. The history further reveals that the USS PASSUMPSIC was enroute to Yankee Station, the Gulf of Tonkin operation area, off the coast of Vietnam via Subic Bay, Republic of the Philippines (RP) during the period April 17-May 18, 1972. The ship conducted underway replenishment (UNREP) operations to ships of the Seventh Fleet on Yankee Station, off the coast of Vietnam during the periods May 21-23, June 2-7, June 17-21, July 1-6, July 15-17, July 28-August 6, August 14-17, August 31-September 8, September 15-26, October 18-24, November 3-14, November 25-26, and December 4-6, 13-16, 1972, January 1-7, 15-28, and February 7-12, 1973. The ship did not anchored or dock in Vietnam.

Further, the Naval History and Heritage Command, Washington Navy Yard, Washington, DC, the custodian of US Navy ships histories, does not maintain a 1973 command history for the USS PASSUMPSIC (AO-107). However, we reviewed a press release submitted by the Military Sealift Command (MSC) dated July 27, 1973. The report reveals that the USS PASSUMPSIC conducted underway replenishment (UNREP) operations on a Western Pacific (WESTPAC) deployment during the period April 1972-March 1973. During this time period, the ship delivered over 90 million gallons of fuel to 355 ships of the Seventh Fleet. In ceremonies at Long Beach, CA, on July 24, 1973, the USS PASSUMPSIC was decommissioned and transferred to the MSC, and will be utilized to support combatant ships in the Pacific.



**DEPARTMENT OF VETERANS AFFAIRS
FARGO REGIONAL OFFICE
2101 ELM STREET
FARGO, NORTH DAKOTA 58102**

Clyde Miltenberger

VA File Number
[REDACTED]

**Decision Review Officer Decision
11/16/2016**

INTRODUCTION

The records reflect that CLYDE MILTENBERGER was a veteran of the Vietnam Era. The veteran served in the Navy from February 10, 1969 to February 8, 1973. The Board of Veterans Appeals remanded the case to our office on February 10, 2015. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Service connection for diabetes mellitus Type II associated with herbicide exposure is granted with a 20 percent evaluation effective April 30, 2008.
2. Service connection for multiple myeloma is granted with an evaluation of 100 percent effective April 30, 2008.
3. Basic eligibility to Dependents' Educational Assistance is established from April 30, 2008.

EVIDENCE

- Board of Veterans Appeals Decision, dated February 10, 2015
- JSRRC response received November 8, 2016

- VACO email received November 14, 2016
- VA Form 21-4138, Statement in Support of Claim, received April 30, 2008
- Treatment records from Comprehensive Cancer Center received March 15, 2002
- Treatment records from VAMC Loma Linda received May 19, 2008 and November 27, 2010
- QTC examination dated June 17, 2008
- CBOC physician note received February 2, 2011
- Service personnel records received June 30, 2009
- BVA hearing dated February 2, 2011
- Electronic mail stating Vietnam service received February 2, 2011

REASONS FOR DECISION

1. Service connection for diabetes mellitus Type II associated with herbicide exposure.

Service connection may be granted for specific diseases or conditions which are presumed to have been caused by exposure to Agent Orange. Although not shown in service, service connection for diabetes mellitus Type II has been granted on the basis of presumption due to Agent Orange exposure.

The Veteran was aboard the USS Passumpsic which docked in-port at An Thoi, Republic of Vietnam, on June 28, 1971. The Veteran provided a personal statement of going ashore while in Vietnam. Resolving all reasonable doubt in the Veteran's favor, herbicide exposure during military service is conceded.

An evaluation of 20 percent is assigned from April 30, 2008, the date we received your claim to reopen a previously denied claim.

Treatment records from VAMC Loma Linda in 2008 the Veteran did not have a diagnosis of diabetes type 2, but rather steroid induced diabetes. Treatment records from VAMC Loma Linda dated October 22, 2009 note a diagnosis of diabetes mellitus, type 2 and oral medications were required for control. On February 2, 2011 the physician clarified the diagnosis of diabetes mellitus, type 2 was diagnosed in 2001. The previous notation of steroid-induced diabetes was a mistake. The diabetes is controlled with glipizide and diet.

We have assigned a 20 percent evaluation for your diabetes mellitus Type II based on:

- Oral hypoglycemic agent required
- Restricted diet

A higher evaluation of 40 percent is not warranted for diabetes mellitus unless the evidence shows:

- Diabetes requiring insulin, restricted diet, and regulation of activities.

The 40 percent evaluation is not warranted as there is no evidence regulation of activities was required for control of diabetes.

This action represents a full grant of benefits sought on appeal as service connection for diabetes mellitus, type 2 has been established.

2. Service connection for multiple myeloma.

Service connection may be granted for specific diseases or conditions which are presumed to have been caused by service if manifested to a compensable degree following military discharge. Although not shown in service, service connection for multiple myeloma has been granted on the basis of presumption.

The Veteran was aboard the USS Passumpsic which docked in-port at An Thoi, Republic of Vietnam, on June 28, 1971. The Veteran provided a personal statement of going ashore while in Vietnam. Resolving all reasonable doubt in the Veteran's favor, herbicide exposure during military service is conceded.

An evaluation of 100 percent is assigned from April 30, 2008, the date we received your claim to reopen a previously denied claim.

An evaluation of 100 percent is assigned during active malignancy or antineoplastic therapy. One year following completion of treatment, residual disability is determined by findings from a VA examination conducted at that time.

VA concedes that multiple myeloma is an incurable disease. Comprehensive Cancer Center treatment records show you were first diagnosed with multiple myeloma in July 2000.

This disability is not specifically listed in the rating schedule; therefore, it is rated analogous to a disability in which not only the functions affected, but anatomical localization and symptoms, are closely related.

This action represents a full grant of benefits sought on appeal as service connection for multiple myeloma has been established.

3. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a veteran who was discharged under other than dishonorable conditions; and, has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as: missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a foreign government or power.

Basic eligibility to Dependents' Education Assistance is granted as the evidence shows the veteran currently has a total service-connected disability, permanent in nature.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, www.va.gov.

Decision Review Officer Decision		<i>Department of Veterans Affairs FARGO REGIONAL OFFICE</i>		Page 1 of 2 11/16/2016	
NAME OF VETERAN Clyde Miltenberger	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA	COPY TO	

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
02/10/1969	02/08/1973	Navy	Honorable

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	1		None

FOR PAYMENT OF ACCRUED BENEFITS ONLY

This rating was prepared after the veteran's death and is based on evidence in file at the time of death.

JURISDICTION: BVA Remand Dated 02/10/2015

ASSOCIATED CLAIM(s): 170; Appeal Action; 02/10/2015

SUBJECT TO COMPENSATION (1.SC)

5099-5012 MULTIPLE MYELOMA [Agent Orange/Multiple Myeloma]
Service Connected, Vietnam Era, Presumptive
Static Disability
100% from 04/30/2008
Original Date of Denial: 04/23/2003

7913 DIABETES MELLITUS TYPE II [Agent Orange/Diabetes]
Service Connected, Vietnam Era, Presumptive
Static Disability
20% from 04/30/2008
Original Date of Denial: 04/23/2003

6260 TINNITUS
Service Connected, Vietnam Era, Incurred
Static Disability
10% from 10/29/2010

6100 BILATERAL HEARING LOSS
Service Connected, Vietnam Era, Incurred
Static Disability
0% from 10/29/2010

COMBINED EVALUATION FOR COMPENSATION :

100% from 04/30/2008

Decision Review Officer Decision		<i>Department of Veterans Affairs FARGO REGIONAL OFFICE</i>		Page 2 of 2 11/16/2016	
NAME OF VETERAN Clyde Miltenberger	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA	COPY TO	

NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC Vietnam Era)

5226 INJURY, RIGHT MIDDLE FINGER (NOT SHOWN BY THE EVIDENCE OF RECORD)
Not Service Connected, Not Incurred/Caused by Service
Original Date of Denial: 04/23/2003

5227 ABRASION, RIGHT LITTLE FINGER (NOT SHOWN ON LAST EXAM 2-5-73)
Not Service Connected, Not Incurred/Caused by Service
Original Date of Denial: 04/23/2003

PENSION ENTITLEMENT DECISIONS (2 PT, 9 NOT PT, 11A, and 11B)

Permanent and Total for NSC from 03/20/2009

COMBINED EVALUATION FOR PENSION : 100%

DEATH DECISIONS (8d. NSC Vietnam Era)

Denial, Not Service Connected Death. Cause of death: intracranial bleeding due to multiple myeloma

ANCILLARY DECISIONS

Basic Eligibility under 38 USC Ch 35 from 04/30/2008

AVSR: I was unable to PCHG the EP 170 to EP 172 so worked under 170. PCLR EP 172 upon completion.
The Veteran died on May 12, 2014. This decision results from a substitution claim that was on appeal.

"I certify that I have reviewed and electronically signed
this decision" ADJSJOHN437

Department of Veterans Affairs	
File Number:	[REDACTED]
Beneficiary:	Miltenerberger, Lisa
Finance Processing Station:	St. Paul(335)
Station of Jurisdiction:	()
Amount:	\$0.00
Program Type:	Compensation

Fiscal Transaction under file number [REDACTED] or:	
Lisa Miltenerberger A/C C MILTENBERGER 42140 TEATREE CT TEMECULA, CA 92591-3823 (Mailing Address)	SSN: [REDACTED] Date of Birth: [REDACTED]
Award Relationships: 29-052-134: Accrued Beneficiary 29-052-134: CPD Spouse Primary Beneficiary	
Daytime Phone: 951-208-7908	

Establish Recurring Deduction (18)

Deduction Type	Offset Purpose	Monthly Amount	Effective Date	End Date	Original Amount	Offset Reference Number	Balance Due	Deduction Taken from
Other Government Agency Indebtedness	Attorney Fees		11/17/2016		\$40,489.66		\$40,489.66	Retroactive Award

Transaction Notes

Atty Maxwell D Kinman LLC

Generated by ANDREW BULERA ID 7674423 11/17/2016, 12:00AM

Authorized by Emily Hanson ID 17148493 11/17/2016, 11:32AM

Department of Veterans Affairs	
File Number:	[REDACTED]
Beneficiary:	Miltenerberger, Lisa
Finance Processing Station:	St. Paul(335)
Station of Jurisdiction:	()
Amount:	\$0.00
Program Type:	Compensation

Fiscal Transaction under file number [REDACTED]	
Lisa Miltenerberger A/C C MILTENBERGER 42140 TEATREE CT TEMECULA, CA 92591-3823 (Mailing Address)	Date of Birth: [REDACTED]
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Daytime Phone: 951-208-7908	

Establish Recurring Deduction (18)

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Transaction Notes

Atty Maxwell D Kinman LLC <div style="text-align: center; font-size: 1.5em;">438 Atty Fee</div>

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Department of
Veterans Affairs

Memorandum

Miltenberger, Clyde J

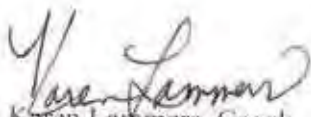

Date: November 17, 2016

From: Michelle LaLonde

Subj: Withholding for Attorney Fee

To: Finance Department

Please withhold \$40,489.66 from the retroactive amount that will be generated by award of November 17, 2016 and establish an 18 transaction for this amount. When completed please advise both Michelle LaLonde and Karen Lammers.



Karen Lammers, Coach

for

Paula Heitmann

VSCM

DRAFT

STATION OF JURISDICTION: SAN DIEGO (377)

FILE NUMBER: [REDACTED]
CLYDE J MILTENBERGER

Claim Information

Date of Claim	Type of Claim	End Product	POA	Claimant	Claim Jurisdiction
02/15/2015	Accrued	165		Lisa Miltenberger	Fargo (437)

Verified Service

Name	Branch	Duty	EOD	RAD	Char Disch
Clyde J Miltenberger	Navy	Active Duty	02/10/1969	02/08/1973	Honorable

Primary Beneficiary Information

CLYDE J MILTENBERGER
Date of Death: 05/12/2014

Date of Birth: [REDACTED]

Gender: Male

SSN: [REDACTED]

Claimant Information

LISA J MILTENBERGER 42140 TEATREE CT TEMECULA CA 92591	Beneficiary Gross	Net Effect
	\$202,398.01	\$202,398.01

Accrued Award Decisions

Decision	This Share	Total Shares	Total Expenses	Amount Paid
Accrued Payable - Relationship	1	1	\$0.00	\$0.00

VBMS COMPENSATION AND PENSION AWARD

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Exhibit 017

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STATION OF JURISDICTION: SAN DIEGO (377)

FILE NUMBER: [REDACTED]
CLYDE J MILTENBERGER

Accrued Distributions/Offsets

Payment Basis	Distributions/Offsets
Proceeds	\$0.00
Lump Sum	\$202,448.03
Computed Amount	\$0.00
Offset Amount	\$50.02
Total Accrued Payable	\$202,398.01

Review Messages

1. Please review carefully, as a concur is required for final Authorization. The potential net award entitlement is \$202,398.01 before applying any finance deductions. The retroactive date of grant or increase is 11/17/2016.

Remarks

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Shereen Rindy 5369166 11/17/2016 11:03 AM		

VBMS COMPENSATION AND PENSION AWARD

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Exhibit 018

File Number: [REDACTED]
 Veteran Name: Clyde Miltenberger
 Claimant Name: Lisa Miltenberger

Effective Date	Received	Should have received	Mo/diff	How many months	Total
05/01/2008	\$0.00	\$2,669.00	\$2,669.00	7	\$18,683.00
12/01/2008	\$0.00	\$2,823.00	\$2,823.00	12	\$33,876.00
12/01/2009	\$0.00	\$2,823.00	\$2,823.00	12	\$33,876.00
11/01/2010	\$123.00	\$2,823.00	\$2,700.00	13	\$35,100.00
12/01/2011	\$127.00	\$2,823.00	\$2,696.00	12	\$32,352.00
12/01/2012	\$129.00	\$2,973.00	\$2,844.00	12	\$34,128.00
12/01/2013	\$130.94	\$3,017.60	\$2,886.66	1	\$2,886.66
01/01/2014	\$130.94	\$3,017.60	\$2,886.66	4	\$11,546.64
05/01/2014					\$202,448.30
	Amount to withhold for attorneys fees 20%				\$40,489.66
	Assesment to withhold				\$100.00
	Amount for Attorneys Fee				\$40,389.66

Andrew Eulera
 Financial Admin. Specialist

 11-17-16